

For instance, at Col. 20 lines 37 - 50, an indication of strabismus is made based on a single algorithm "where the center point of the pupil is located" with respect to "divergence of the corneal reflection from the center pixel" (of the pupil). Likewise, in the paragraph bridging Cols. 20 - 21, a single algorithm is used wherein the retinal reflection is divided into quadrants, and light intensity in each quadrant measured to determine whether myopia or hyperopia is present. As such, all that is provided is an indication of a particular disorder based on a single algorithm. While more than one algorithm may be disclosed to detect whether a particular disorder is present, only one algorithm functions at a time to detect the disorder. It is to be noted these single algorithms are not bottomed by statistical analysis.

In contrast, Applicant's claim 1 of the instant application requires "a series of algorithms to statistically determine a plurality of parameters" in order to determine optical status of an eye. For example, for a bilateral balance ratio, 27 different, distinct statistical algorithms of the table labeled BILATRL BAL. RATIO shown on Pg. 10 of Applicant's specification are used. Likewise, for determining AMBLYOPIC FACTORS, 56 different, distinct statistical algorithms are used. For determining errors of REFRACTION, 24 different, distinct statistical algorithms are used, and for errors related to ALIGNMENT, 19 different, distinct statistical algorithms are used. As noted at Pg. 13 lines 4 - 5, "This presentation can be calculated as median or mean or with or without confidence intervals.". It should be apparent that, in the absence of "a series of algorithms", as in the prior art '282 patent that only uses a single algorithm at

a time to detect a particular disorder, there is no "series of algorithms to statistically determine" any parameter of an eye, such as the aforementioned parameters BILATERAL BALANCE RATIO, AMBLYOPIC FACTORS, REFRACTION or ALIGNMENT because statistical calculations, such as the mean and median values, cannot be calculated from a single measurement.

In view of the foregoing, since the method of the instant application is constructed grossly different from and functions differently than the '282 patent of the prior art, it is respectfully submitted that the Examiner has not established a *prima facie* case for a rejection under 35 USC 102(b).

Claims 5 - 7, 9, 10 and 13, being dependent from claim 1, believed allowable, should also be allowable upon claim 1 being found allowable.

Independent claim 14 is rejected under 35 USC 102(b) for the same reasons set forth with respect to claim 1. Claim 14 is amended herewith to clarify the claim and to further distinguish the claim over the prior art '282 reference. With this amendment, claim 14 provides "for each eye disorder of said disorders of eyes, performing statistical calculations using a plurality of statistical algorithms on each said retinal reflex...". As such, there should now be no case under 35 USC 102(b) for reasons set forth above with respect to claim 1.

Independent claim 16 is rejected under 35 USC 102(b) for the same reasons as set forth with respect to claim 1. Here, claim 16 provides "performing a series of statistical calculations on each said retinal reflex, said statistical calculations performed on selected areas of each said retinal


reflex...". As noted above with respect to claim 1, there is no "series of statistical calculations" as defined by Applicant's specification evident in the prior art '282 patent. Please see PHILLIPS v AWH ("the specification necessarily informs the proper construction of the claims"). For these reasons, it is respectfully submitted that the Examiner has not established a *prima facie* case for anticipation of claim 16 under 35 USC 102(b).

Claim 17, dependent from a base claim believed allowable, should be found allowable upon claim 16 being found allowable.

The Examiner has apparently inadvertently overlooked independent claim 18. However, since the provisions of claim 18 are not found in the cited prior art '282 patent, claim 18 should thus be found allowable.

No new matter is added with this amendment, and no new claims are added that would justify a new or additional search. It is respectfully requested that the rewriting of new claims be held in abeyance until settlement of the case so that any additional fees for new claims may be properly calculated.

As the case appears to be in condition for allowance, favorable action is respectfully requested.

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